APPENDIX A—ITEM No. 1

JEFFERSON CIRCUIT COURT

CHANCERY BRANCH, SECOND DIVISION

O. C. Lee, et al, - - - - - - - - Plaintiffs,

v.

Louisville & Nashville Railroad Company, et al., - - - - - - - - Defendants.

OPINION.

Prior to 1957 the L & N maintained two seniority rosters affecting plaintiffs and other members of the defendant Unions. One roster was at the South Louisville Roundhouse and the other at the South Louisville Shops, the "two points" being separated only by a fence. In 1957, the L & N discontinued at the Roundhouse the operations in which plaintiff employees worked, but offered the plaintiffs employment at the Shops. The bargaining representative and the L & N reached the conclusion that plaintiffs would have to go to the foot of the roster in the South Louisville Shops.

Plaintiffs felt themselves aggrieved by this method of placing them at the foot of the seniority roster and took the position that at least they should have been dovetailed in with the employees of the Shops. They pursued their grievance, being fully represented by counsel at the time, to the National Railroad Adjustment Board, which Board determined the issue adversely to plaintiffs.

In this action plaintiffs seek a declaration of rights against both the defendant Railroad Company and the

defendant Unions relative to a proper interpretation of the collective bargaining agreement pertaining to seniority rights; seek an accounting from the L. & N in favor of each plaintiff for wages allegedly lost; and a recovery against defendant Unions "for plaintiffs' expenses herein, and recovery against all defendants of costs and an appropriate fee for plaintiffs' counsel".

On motions to dismiss and for summary judgment, all defendants contend that the order of the National Railroad Adjustment Board is final, and that this Court has no jurisdiction of this action.

Numerous cases have held that the jurisdiction of the National Railroad Adjustment Board to interpret similar provisions of collective bargaining agreements between railroads and their unions is exclusive, *Penn. Railroad Co.* v. *Day*, 360 U. S. 548; 3 L. Ed. 2d 1422, and earlier cases. The *Day* case held that the jurisdiction was exclusive even though Day was a retired employee no longer in the active employ of the railroad. Other cases have held that when jurisdiction is exercised by the Board, its order becomes final (except in cases of a money award, not pertinent here). In *Union Pacific Railroad Co.* v. *Price*, 360 U. S. 601, 3 L. Ed. 2d 1460, it was not only held that the finding of the Board was final but also that the Board's order precluded a subsequent action at common law for damages.

Plaintiffs seek to avoid the effect of these two lines of cases by asserting, one, that even though they have already appealed to the Board and lost, that Board did not have jurisdiction of their action, and two, that the defendant unions in failing to take their side of this dispute have been guilty of discrimination against them.

Relative to the claim of discrimination, plaintiffs rely heavily on *Steel* v. *L & N Railroad Co.*, 323 U. S. 192, 89 L. Ed. 173, and *Conley* v. *Gibson*, 355 U. S. 41, 2 L. Ed.

2d 80. Both of these "discrimination" cases were specifically pitched on the theory that there was an "invidious" discrimination against the aggrieved members of the labor unions "because of race". In both cases the complaints were Negroes who were discriminated against in favor of white members of the same union. Here, we have no such situation.

Apparently the only "discrimination" we have in this case rests in the disappointment that plaintiffs encountered when the defendant Unions failed to agree with their position in this matter. Even if this amounted to discrimination, it is difficult to see how this discrimination has brought about the result before the National Railroad Adjustment Board, for plaintiffs were represented by able counsel before that Board. They did not rely upon the representation or failure to furnish representation by defendant Unions.

Moreover, the well-considered opinion of *Colbert* v. *Brotherhood of Railroad Trainmen*, 206 F. 2d 9, disposed of an almost identical argument involving seniority rights in which the complainants contended that a new agreement entered into by their unions was the "result of the arbitrary, capricious, and fraudulent" acts of the railroad and the unions. Rejecting an argument similar to the one here advanced, the Court quoted from *Ford Motor Co.* v. *Huffman*, 345 U. S. 330, 73 S. Ct. 681, saying:

> "The complete satisfaction of all who are represented is hardly to be expected."

The Circuit Court of Appeals held that the National Railroad Adjustment Board, not the Courts, was the proper tribunal to try an action similar to this.

In *Heppinstel* v. *System Federation No. 9*, 337 Mich. 251, 59 N. W. 2d 278, a conspiracy between Railroad Unions

and the Railroad was charged and an injunction and accounting was sought. There, like here, the claim was made that individual rights of the plaintiffs were sought to be enforced rather than a mere interpretation of the collective bargaining agreement. The State Court held that in order to reach the result sought by the plaintiffs there, an interpretation of the collective bargaining agreement had to be undertaken and, therefore, jurisdiction was in the Board and not the Courts.

So it is in this case. No matter what goal is attempted to be reached, whether it be a declaration of rights between the parties, an accounting for wages allegedly lost, or even a recovery of expenses against the defendant Union, the road to that goal necessarily involves an interpretation of the collective bargaining agreement.

Unions cannot discriminate against plaintiffs for some invidious reasons such as race or religion, but freedom from discrimination does not require that the union in every grievance agree with its aggrieved member. Justice requires that the aggrieved party have an opportunity to be heard before a proper tribunal. These requirements, however, have been fulfilled. Plaintiffs were well-represented, and have been heard by the tribunal which they initially sought out. Had they been successful before that tribunal, this litigation would never have ensued. Having been unsuccessful, both for the reasons that the Board's jurisdiction is exclusive and that its orders in matters of this nature are final, it follows that this Court is without jurisdiction to re-hear the same issue.

The contention that the Board to which plaintiffs first applied lacked jurisdiction is not sound. In *Colbert* v. *Brotherhood of Railroad Trainmen*, *supra*, the Court specifically held that an individual employee has the right to refer his grievance to the National Railroad Adjustment

Board. It is not necessary that the dispute be between a union and a railroad. An individual employee may thus present his grievance and so may a group of employees as was done in this case.

I conclude that this Court lacks jurisdiction to entertain this action.

This case will appear on my motion hour docket on Thursday, September 8th, at 9:30 A. M., at which time counsel may tender judgment in accordance with this opinion.

(s) Lampe, Judge.

August 25, 1960.

CC: Mr. Blakey Helm and Mr. Joseph Helm,
Mr. H. G. Breetz,
Mr. Joseph Stopher,
Mr. Richard R. Lyman,
Mr. Robert E. Hogan.

APPENDIX A—ITEM No. 2

Judgment entered in Court September 12, 1960 is as follows, to-wit:

JEFFERSON CIRCUIT COURT
Chancery Branch, Second Division
CR 47854

O. C. Lee, Et Al, - - - - - - - - Plaintiffs,

v.

Louisville & Nashville Railroad Company, Et Al., - - - - - Defendants.

JUDGMENT.

This action having been submitted to the Court on motion of defendant, Louisville & Nashville Railroad Company, to dismiss or for a summary judgment, and on motion of all other defendants to dismiss the complaint herein, and the Court having heard argument of counsel for all parties and having considered the briefs filed by counsel for all parties, and the Court being of the opinion that this Court lacks jurisdiction of the subject matter of this action and that defendants are entitled to a judgment in their favor dismissing the complaint herein, and the Court having handed down an opinion on August 25, 1960 in accordance with the Court's conclusion aforesaid, and which opinion is ordered made part of the record herein, and the Court being advised, it is now

Ordered and Adjudged that pursuant to the said opinion of the Court the complaint of plaintiffs, as amended;

herein should be and same is hereby dismissed, and that defendants shall have and recover from plaintiffs their costs herein expended, for which they may have execution.

Dated this 12th day of September, 1960.

(s) Stuart E. Lampe, Judge.

Counsel for Plaintiffs

(s) Joseph E. Stopher,
Counsel for Defendant, Louisville & Nashville Railroad Company,

(s) Richard R. Lyman,
and

(s) Robert E. Hogan,
Counsel for Defendants other than Louisville & Nashville Railroad Company.

APPENDIX A—ITEM No. 3

Amended Judgment entered in Court October 6, 1960 is as follows, towit:

JEFFERSON CIRCUIT COURT
Chancery Branch, Second Division
CR 47854

O. C. Lee, Et Al. - - - - - Plaintiffs.

v.

Louisville & Nashville Railroad Company, Et Al. - - - - - Defendants.

AMENDED JUDGMENT.

Judgment of this Court entered on the 12th day of September, 1960 is hereby amended to add the following paragraph:

It Is Hereby Ordered And Adjudged that the amount in controversy as to each of the plaintiffs is in excess of $2000.00, exclusive of interest and costs, and as to plaintiffs, K. L. Putman and Roy Fowle is in excess of $2,500.00 each, exclusive of interest and costs.

Entered this 6th day of October, 1960.

(s) Stuart E. Lampe, Judge.

Over objection of all defendants.

(s) S.E.L.

APPENDIX A—ITEM No. 4

COURT OF APPEALS OF KENTUCKY

RENDERED: NOVEMBER 2, 1962

K. L. Putman, Et Al., - - - - - - *Appellants,*

v.

Louisville & Nashville Railroad Company, Et Al., - - - - - - *Appellees.*

and

O. C. Lee, Et Al., - - - - - - *Appellants,*

v.

Louisville & Nashville Railroad Company, Et Al., - - - - - - *Appellees.*

Appeals from the Jefferson Circuit Court,
Stuart E. Lampe, Judge,
Chancery Branch, Second Division

OPINION OF THE COURT BY COMMISSIONER STANLEY—AFFIRMING.

(Not to be officially reported or cited as authority.)

The first styled case is an appeal as a matter of right by two individuals and as representatives of other employees of the Louisville and Nashville Railroad Company against the company and four labor unions to which they severally belonged, and, as well, certain officers of the unions. The second styled case is submitted on a motion for an appeal under KRS 21.080, before amendment, of parties making the same claims but for less than $2,500.

The motion is sustained and the cases are covered by one opinion.

On February 17, 1957, there was a reduction in forces by the railroad company which affected 66 men working in its South Louisville Roundhouse. The company had maintained two separate rosters for the Roundhouse and its shop employees, respectfully. The Roundhouse men affected by the force reduction were given the right to bid on and be awarded jobs in the shops. A controversy arose as to whether or not the Roundhouse employees should have their seniority rights maintained and be dovetailed into the roster of the shop employees. Representatives of the railroad company and of the unions, as bargaining agents, concluded that the Roundhouse employees should go at the foot of the shop roster. Those employees filed a grievance with the National Railroad Adjustment Board, an instrumentality set up under the Federal Railway Act of 1934, 45 U.S.C.A., § 151, et seq. After a hearing, that Board decided that the interpretation of the contracts and working rules of the railroad company and the respective unions was correct and dismissed the complaint.

Thereafter the Roundhouse craftsmen filed their complaint in the Jefferson Circuit Court, asking a declaration of rights in respect to the controversy and for an accounting for wages lost. The Court dismissed the same on a summary judgment for want of jurisdiction.

The federal statute provides for the submission to the Board of disputes between an employee or group of employees of an interstate carrier employer growing out of grievances or out of the interpretation or application of collective bargaining agreements. The Board has exclusive primary jurisdiction over such controversies, and its decision in this class of disputes is final. 45 U.S.C.A., § 153, First. The appellants seek here, as they did below, to avoid

the decision of the National Railway Adjustment Board on the ground that there was an arbitrary discrimination in the decision and because they have a constitutional right to appeal to the courts for relief, since the members of the Board were chosen by the railway companies and the railway employee unions, and, therefore, their decisions cannot be regarded as those of a fair and unprejudiced tribunal.

The Circuit Court, Judge Stuart E. Lampe sitting, filed an opinion in which he discussed the several contentions of the respective parties made before us and cited numerous authorities. We have carefully considered the several briefs and that opinion, and concur in and adopt the Circuit Court's opinion as the opinion of this Court without reciting it herein.

The judgment is affirmed.

Attorney for Appellants:
JOSEPH B. HELM,
Louisville, Kentucky.

Attorneys for Appellees:
JOSEPH E. STOPHER,
(BOEHL, STOPHER, GRAVES & DEINDOERFER)
H. G. BREETZ,
M. D. JONES,
ROBERT E. HOGAN,
all of Louisville, Kentucky,
RICHARD R. LYMAN,
Toledo 4, Ohio.

APPENDIX A—ITEM No. 5

ORDERS—KENTUCKY COURT OF APPEALS

WINTER TERM, FEBRAURY 22, 1963

Putman, Et Al., v. L. & N. Railroad Co. Et Al., Jefferson, Lee, Et Al., v. L. & N. Railroad Co., Et Al., Jefferson

The Court being sufficiently advised, it is considered that the petition of appellants for a rehearing be and the same is overruled in each case.

APPENDIX A—ITEM No. 6

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

AWARD No. 2899

Docket No. 2787-I 2-L&N-I-'58

Form 1

Parties to Dispute: J. D. Masden, et al.
Louisville and Nashville Railroad Co.

Dispute: Claim of Employes:

1. By Bulletin dated February 4, 1957, the Louisville & Nashville Railroad Co. (hereinafter referred to as the carrier) announced the discontinuance of all mechanical operations of its South Louisville Roundhouse, effective at the close of the third shift, February 17, 1957. Petitioning employes (hereinafter called petitioners) who prior to that date had been making inspections and running repairs to and servicing diesel locomotives, at points which for more than fifty years had been considered in the South Louisville Roundhouse district, were cut off in force re-

duction, purportedly under Rule 26 of the skilled employes' agreement and Rule 13 of the unskilled employes' agreement. Immediately following the discontinuance by the carrier of such operations, the jobs comprising such operations were bulletined by the carrier. Some of such jobs were bid in by other employes of the carrier junior in seniority to petitioners. The remaining jobs were by the carrier assigned either to junior employes or assigned to some of petitioners with a new seniority dating of February 18, 1957. In the reduction of forces and restoration of forces, petitioners' seniority was not protected as required by Rule 29 and Rule 26(g) of the skilled agreement and Rule 13 and Rule 14(c) of the unskilled agreement. Employes junior in seniority to petitioners (some of whom have been brought in from outlying points) are now doing their work. Petitioners have continued to do the same kind of work and in the same places as prior to February 18, 1957, but have been assigned to less desirable shifts and hours of employment and their seniority now stands only as of February 18, 1957, though many of them have more than thirty years' seniority.

2. Notwithstanding the carrier purportedly abandoned the South Louisville Roundhouse and discontinued all mechanical operations thereof, it continues to maintain seniority rosters for the Roundhouse district and petitioners have the same seniority standing thereon as prior to February 18, 1957. Nevertheless their employment since that date has been upon the basis of seniority in the South Louisville Shops as of February 18, 1957.

3. The carrier has refused to dovetail the seniority of petitioners in with the employes of the South Louisville Shops, as of that date, and the Unions, being the bargaining representatives of the crafts to which petitioners be-

long, have refused to request of the carrier the dovetailing of petitioners' seniority with said South Louisville Shop employes.

4. Questions upon which an award is sought

(a) Under the respective agreements in force, can the carrier deprive petitioners of their seniority standing under the pretext of discontinuing jobs and reducing force, when the same work is being done as before and in the same places?

(b) Are not petitioners entitled to be dovetailed in seniority with other employes of the South Louisville Shops, if their work continues to be assigned to said Shops?

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The grievance herein involves consequences flowing from the closing of the South Louisville Roundhouse, a separate seniority point of the carrier. The claimants in Docket No. 2787-I are employes of the South Louisville Roundhouse, and they advance the primary claim that they are entitled to be dovetailed in seniority with employes of the South Louisville Shops, another separate seniority point.

Seniority rights, including rights to have seniority dovetailed, are created or extended solely by contract or agree-

ment negotiated between the carrier and the duly accredited representatives of the respective craft or class of employes.

The record in Docket 2787-I discloses that no agreement provision for the dovetailing of seniority has been negotiated, or agreed to by the carrier and the duly accredited employe representatives. The seniority rules of the current collective agreement provide only for standard point seniority, which does not call for dovetailing of seniority when a point is closed or abolished.

We find no merit in the contention of the claimants that the South Louisville Roundhouse was not in fact closed or in the contention that the closing of the South Louisville Roundhouse was in bad faith or a subterfuge. When a point is closed, the work theretofore performed at that point is often transferred to another point, and from all that appears in the record, that is what happened in these circumstances.

The controlling agreement has not been violated.

AWARD

Claim denied.

National Railroad Adjustment Board
By Order of Second Division

Attest: Harry J. Passaman,
Executive Secretary.

Dated at Chicago, Illinois, this 30th day of June 1958.

APPENDIX B

CONSTITUTIONAL AND STATUTORY PROVISIONS

ITEM 1—Kentucky Constitution

§ 126. *Jurisdiction of Circuit Courts.* The jurisdiction of said Court shall be and remain as now established, hereby giving to the General Assembly the power to change it.

ITEM 2—Kentucky Constitution

§ 127. *Appeal from Circuit Court.* The right to appeal or sue out a writ of error shall remain as it now exists until altered by law, hereby giving to the General Assembly the power to change or modify said right.

ITEM 3—Kentucky Revised Statutes

23.010 *Court of record; original civil jurisdiction; judge conservator of the peace.* The Circuit Court is a Court of record. It has original jurisdiction of all matters, both in law and equity, of which jurisdiction is not exclusively delegated to some other tribunal, and jurisdiction in all cases where the title to land is in question, or in which it is sought to enforce a lien upon, or to subject, land by provisional remedy to the payment of debt. Each circuit judge is a conservator of the peace throughout the state.

ITEM 4—Fourteenth Amendment to U. S. Constitution

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ITEM 5—U. S. Code, Title 45

§ 153. *National Railroad Adjustment Board—Establishment; composition; powers and duties; divisions; hearings and awards*

First. There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided— * * * *

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows: * * * *

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

* * * * * * *

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

* * * * * * *

APPENDIX C

EXCERPTS FROM BARGAINING CONTRACTS

ITEM 1—Excerpts from Exhibit "A" with Complaint in Equity

RULE 29.—SENIORITY

29(a) Seniority of each employe covered by this agreement will begin from the date and time the employe starts to work.

29(b) Seniority of employes in each craft covered by this agreement shall be confined to the point employed for those who perform work as per special rules of each craft in the various departments of the railroad as follows:

Machinists
Boilermakers
Sheet Metal Workers
Moulders
Electricians

Four subdivisions of the Carmen as follows:

Patternmakers
Upholsterers
Painters
Other Carmen
Coach Cleaners

At Louisville, Kentucky, seniority rosters for each craft will be maintained as follows:

Machinists
South Louisville Shops
South Louisville Roundhouse

Boilermakers
South Louisville Shops
South Louisville Roundhouse

Excerpts from Bargaining Contracts

Sheet Metal Workers

South Louisville Shops
South Louisville Roundhouse
Union Passenger Station

Electricians

South Louisville Shops
South Louisville Roundhouse
Union Passenger Station

Other Carmen

At South Louisville Shops the Air Break Room, Coach Carpenters, Painters, Tank Shop #12, Planing Mill, Cabinet Shop and Plating Shop; and Louisville Terminal Car Department, Roundhouse and Union Passenger Station seniority rosters will be maintained separately as heretofore.

29(c) Seniority rosters will be revised in January of each year. They will be posted and open to protest and proper correction for a period of 60 days from date of posting, which shall be shown thereon. After such time, the dating shown thereon shall govern for that period. Any seniority dating which has remained unchanged on 3 successive rosters shall not be open to further protest. The General Chairman shall be furnished 2 copies of all seriority rosters covering his respective craft, and the local chairman shall be furnished copies of his local craft's seniority rosters.

29(d) Wheel rollers, wheel pressmen and lve vat attendants, South Louisville Shops, shall be carried on one seriority roster, but separate from regular machinists helpers.

Excerpts from Bargaining Contracts

ITEM 2—Excerpts from Exhibit "A" with Complaint in Equity

RULE 26.—REDUCTION IN FORCES

26(a) When it becomes necessary to reduce expenses, the force at any point or in any department shall be reduced, seniority as per Rule 29 to govern; the employes affected to take the rate of the job to which they are assigned.

26(g) In the restoration of forces employes will be restored to service in accordance with their seniority, if available.

ITEM 3—Excerpts from Exhibit "B" with Complaint in Equity

RULE 9

Seniority Rosters

(a) Seniority rosters of employes will be compiled by seniority districts and will show the employe's dating in each rank to which he is entitled.

ITEM 4—Excerpts from Exhibit "B" with Complaint in Equity

RULE 10

Seniority Dating

(a) Seniority of employes will be computed from the date the employe's pay starts, provided he is employed on sixty days in a period of one year.

Excerpts from Bargaining Contracts

ITEM 5—Excerpts from Exhibit "B" with Complaint in Equity

RULE 13

Force Reductions

(a) When force is reduced, the senior employes in the seniority subdivision shall be retained, unless the Management and the Committee agree that a senior man is not qualified.

ITEM 6—Excerpts from Exhibit "B" with Complaint in Equity

RULE 14

Retaining Seniority for Recall

(c) In the restoration of forces laid-off men will be returned to the service in the order of their seniority.